IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9-11-2009

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM
AND
THE HONOURABLE MR.JUSTICE V.PERIYA KARUPPIAH

CRL.A.No.281 of 1998

1.Rakkiappan
2.Subramanian
3.Somaraj
4.Aarusamy .. Appellants

vs

State by
S.I. Of Police
Uthiyur Police Station
Erode Dist.
(Crime No.198/95) .. Respondent
Criminal appeal preferred under Sec.374 of the Code of Criminal Procedure against the judgment of the I Additional Sessions Judge and Chief Judicial Magistrate, Erode District, Erode, made in S.C.No.192 of 1997 dated 24.2.1998.
For Appellants : Mr.B.Sriramulu
Senior Counsel
for Mr.A.K.Sridharan

For Respondent : Mr.Babu Muthu Meeran
Additional Public
Prosecutor

Mr.Mahimairaj for PW1
JUDGMENT
(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)
This appeal has arisen from the judgment of the I Additional Sessions Division cum Chief Judicial Magistrate, Erode, made in S.C.No.192 of 1997 whereby the appellants four in number, stood charged, tried and found guilty as follows:

ACCUSED	CHARGES	FINDING	PUNISHMENT
A-2	302 IPC	Guilty	Life imprisonment
A-1	302 r/w 34 IPC		

Guilty
Life imprisonment
A-3
302 IPC
Guilty
Life imprisonment
A-4
302 r/w 34 IPC
Guilty
Life imprisonment
A-2 & A-3
307 IPC
Guilty
9 years Rigorous Imprisonment
A-1
307 r/w 109 IPC
Guilty
7 years Rigorous Imprisonment

2.On being found guilty as per the charges and awarded punishment as referred to above, the accused preferred an appeal in C.A.No.281 of 1998. A Division Bench of this Court by a judgment dated 25.4.2002, set aside the judgment of the Court of Session and recorded an order of acquittal. Aggrieved over the same, the State preferred Criminal Appeal No.140 of 2003 before the Apex Court. The Apex Court after hearing the appeal, set aside the judgment of the Division Bench and remitted the matter to this Court to consider the appeal afresh and decide whether the evidence of P.W.2 was sufficient to fasten the guilt of the accused persons as projected by the prosecution. Thus the appeal has come up before this Court for consideration afresh.

3.Short facts necessary for the disposal of this appeal can be stated as follows:

(a) The first deceased (D1) Nachimuthu Gounder along with his wife, the second deceased (D2) Saraswathi and his son Rajamani examined as P.W.1, was living in Pichankattu Thottam, Kullagoundenpudur. During the relevant time, P.W.2, a boy aged 14, was employed by them as a servant. Another son of D1 was employed at Bharathi Vidya Bhavan, Kodaikanal. P.W.1's family owned 20 acres of land in and around Pichankattu Thottam. All the four accused/appellants were brothers and sons of one Muthusamy Gounder. The lands of the accused were situated on the north of P.W.1's family lands. In between the lands of both the parties, there was a fence having a width of 11 feet. Nearly for a decade, the accused were cutting the fence which was objected to by P.W.1's family then and there, and there was enmity that prevailed. One and half years before the occurrence, P.W.5 Village Munsif, and P.W.4 who belonged to Dharapuram, tried to compromise the same. At that time, the accused challenged that they would see to that. On 21.11.1994, P.W.1 gave a complaint to P.W.14, the Sub Inspector of Police, Uthiyur, against the accused. The Police Officer came to the disputed place, called both the parties and advised them to measure the land with the help of a surveyor and settled the same peacefully. A-1 and A-2 gave an undertaking which is marked as Ex.P20, to abide the same.

(b) On the date of occurrence i.e., 7.12.1995, P.W.1 left the house to sell chilli at Ottanchatram. His brother Balasubramanian left for Chennai ever before P.W.1 left the house. At about 7.30 P.M., D1 and his wife D2, were witnessing TV. At that time, P.W.2 was also witnessing TV. The tube light was burning. All the accused persons entered into the house. A-1 was shouting at D1 "You must be cut. Where are your sons." Immediately, A-1 held D1, while A-4 held his wife D2 and pushed her aside. A-2 attacked D1 with an aruval on the neck and cheek. A-3 attacked his wife D2 with an aruval on the face towards eyes and head. A-1 asked A-2 to cut P.W.2. Accordingly, A-2 attacked P.W.2 on his head with the aruval. When P.W.2 tried to ward off, A-3 caused grievous injury to P.W.2 on his hand. P.W.2 fell down swooned. He did not know what happened thereafter. Thereafter, the accused fled

away from the place of occurrence with weapons of crime.
(c) P.W.3 used to leave his cattles at D1's thottam and spend some time there. On the day, he came at about 7.30 P.M., and after standing an hour, he was just returning at about 8.30 P.M. When he was crossing the house of D1, he saw all the four accused coming out from his house. P.W.3 went to Vellakoil, and thereafter when he returned to Kulathupalayam, he came to know about the incident. P.W.1 returned to his house at 10.00 P.M. from Ottanchatram. When he entered into the house, to his shock he found his parents D1 and D2 and P.W.2 lying on the floor in a pool of blood. D1 had already died. He noticed grievous injuries both on his mother and also on P.W.2. Immediately he took his TVS 50 and informed his neighbour Kuppusamy Gounder who in turn informed to others. On getting information through telephone, Chellamuthu and Palanisamy arrived. In the meanwhile, P.W.1, Chellamuthu and P.W.4 engaged a taxi and came to P.W.1's house. Both the wife of Nachimuthu Gounder, D2, and P.W.2 were taken to Coimbatore Medical Centre. P.W.4 accompanied P.W.1. On the way, D2 died. P.W.2 was admitted in the hospital as inpatient. The dead body of D2 was handed over to the Government Hospital, Dharapuram.
(d) On the next day i.e., 8.12.1995 at about 8.00 A.M., P.Ws.1 and 4 went to Uthiyur Police Station. P.W.1 gave Ex.P2, the report. On the strength of the said report, P.W.15, the Sub Inspector of Police, registered a case in Crime No.196/95 under Sections 302 and 307 of IPC. The printed FIR, Ex.P21, was despatched to the Court.
(e) On receipt of the copy of the FIR, P.W.16, the Inspector of Police, took up investigation, proceeded to the spot, made an inspection and prepared an observation mahazar, Ex.P16, and also a rough sketch, Ex.P22. He recovered from the place of occurrence, bloodstained cement floor, M.O.17, non-bloodstained cement floor, M.O.18, and saffron colour towel, M.O.19, under a cover of mahazar. P.W.11, the Photographer, took the photos of D1 at the place of occurrence and that of D2 at the hospital as per the request of the Investigator, and the photos along with its negatives were marked as M.O.13 series. Then he conducted inquest on the dead body of Nachimuthu Gounder at the place of occurrence in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P23. He conducted inquest on the dead body of Saraswathy, the wife of Nachimuthu Gounder, at the Government Hospital, Dharapuram, in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P24. Then the dead body of D1 was sent to the Government Hospital. He gave two requisitions for the conduct of postmortem on the dead bodies.

(f) P.W.9, the Medical Person, attached to the Government Hospital, Dharapuram, on receipt of the said requisition conducted autopsy on the dead body of Natchimuthu and has issued a postmortem certificate, Ex.P13, wherein he has noted the following external injuries:
"1.Incised wound of 8 x 3 cm extended from centre of neck anteriorly to the 3" below left ear lobe muscle depth.
2.Incised wound of 10 x 1 cms at back of neck at C.4 level. All the muscles underlying tissues, vessels cut including C.4 Vertebra partially cut from back to anterior. Spinal Cord exposed and partially cut.
3.3 x 2 cm irregular Injury on the left side of nose bone depth. Bone exposed. Fracture of left side nasal bone present.
4.1 = x 2 cm size incised wound above the left eye brow bone depth.
All the above wound edges are sharp."
The Doctor has opined that the deceased would appear to have died of injury to spinal cord at C.3 level, and the death is Instantaneous and death would appear to have occurred about 36 to 38 hours prior to autopsy.
(g) P.W.10, the Assistant Surgeon, attached to the Government Hospital, Dharapuram, on receipt of the said requisition, conducted autopsy on the dead body of Saraswathy and has issued a postmortem certificate, Ex.P15, wherein he has noted the following external injuries.
"1.Incised wound 18 cm x 2 cm at the centre of Scalp. Transversely edge of the wound is sharp. On D.D. fracture present in the centre of Frontal Bone, Temporal Bones on both sides 25 cm x 1 cm

through which Brain matter seen with dura matter.
2.Incised wound extended from 1" lateral to left angle of eye, crossing the Bridge of nose and ends in the Right side of Left ankle of Right eye 1" lateral to that through which Brain matter seen with intact dura matter. Both the eye balls are centrally cut through lens and vitreom are dropped out.
3.Incised wound extended from Right Cheek crossing the Right ear lobe to the Occipital Bone on Right side 5 cm below and lateral to the Right ear lobe. On D/D, Skin soft tissue and Sterno mastoid are partially cut. Vessels underneath (Carotid artery) is intact. On opening the skull bone Brain matter is intact and the Base of the Skull Bone is fractured extending from left Orbital bone to the Pituitary Fossaa."
The Doctor has opined that the deceased would appear to have died of haemorrhage due to multiple fractures and its complications, and death would appear to have occurred 30 to 32 hours prior to autopsy.
(h) P.W.2 was brought to Kovai Medical Centre at about 2.30 A.M. on 8.12.1995. One Dr.Saravanan, who was on duty admitted him as inpatient. The following injuries were wound on the person of P.W.2.
"1.Large cut injury over left temporal parietal region with depressed fracture of bone, exposing the brain (about 5 x 4 cm) with bone loss (10-12 cm in length) & brain laceration.
2.Linear cut wound about 4 x 2 cm over frontal region.
3.Cut injury about 4 cm of right wrist (Injury to ulnar nerve, ulnar artery & all flexer tendons)."
A wound certificate was issued to that effect which is marked as Ex.P26. Since the said Doctor was in foreign country, he was not examined.
(i) Dr.Saravanan sent P.W.2 to P.W.17, the Neuro Surgeon, for treatment. P.W.17 accordingly examined P.W.2, when he noticed a deep cut due to sharp weapons used on the left side of the head and brain was protruding. There was a wound on the left wrist. He gave first aid immediately. Thereafter, P.W.2 was kept in ventilator for two hours and at that time, CT Scan was taken for Ramu for operation. It was accordingly, carried on; thereby a blood clot was removed, and peeled of skin was repaired. CT Scan report is marked as Ex.P27, and the CT Scan is Ex.P28 series. P.W.2 was kept in ventilator for 48 hours, and thereafter, he was able to breathe naturally. When P.W.17 the Doctor, saw P.W.2 on 12.12.1995 at 8.30 A.M., he was regaining consciousness slowly. P.W.2 was discharged on 21.12.1995. Ex.P25 is the discharge summary given by P.W.17 for P.W.2.

(j) On 15.12.1995, the accused were arrested in the presence of P.W.13, the Village Assistant, and another witness. A-2 volunteered to give a confessional statement. The same was recorded. The admissible part is marked as Ex.P18. Following the same, he produced M.Os.1 and 2 aruvals, M.Os.20, 22 and 24, bloodstained full arm shirts, M.Os.21, 23 and 25, bloodstained lungies, M.O.26, blue colour half shirt, and M.O.27, bloodstained dothi with read border. All these articles were recovered under a cover of Ex.P19, mahazar, in the presence of the above witnesses. The material objects recovered from the place of occurrence and from the dead body and the weapons of crime recovered from the accused on confession were subjected to chemical analysis as a result of which Ex.P7, the chemical analyst's report, and Ex.P8, the serologist's report, were received by the Court. On completion of investigation, the Investigator filed the final report.
4.The case was committed to Court of Session, and necessary charges were framed. In order to substantiate the charges, the prosecution marched 18 witnesses and also relied on 27 exhibits and 28 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses which they flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced and took the view that the prosecution has proved the case beyond reasonable doubt and hence found them guilty and awarded the punishment as referred to above. They preferred an appeal. Upon acquittal by the Court, an appeal was preferred by the State before the Apex Court. The Apex Court set aside the judgment of this Court and remitted the matter for disposal afresh. Now, this appeal is taken up.

5.Advancing arguments on behalf of the appellants, the learned Senior Counsel Mr.B.Sriramulu would submit that in the instant case, the prosecution before the trial Court marched P.W.2 as the only witness who was shown not only as an eyewitness, but also as injured; that in a case where only one witness is marched by the prosecution, the evidence before acceptance must be looked into, and it must also be seen whether it was supported by corroborative piece of evidence; that in the case on hand, the case of the prosecution was that due to the previous enmity at the time of occurrence that was between 7.30 P.M. and 8.30 P.M., on 7.12.1995, A-1 and A-4 accompanied by A-2 and A-3 who were armed with deadly weapons, went inside the house of the deceased and after severely attacking D1 Nachimuthu Gounder and D2 his wife Saraswathi and a boy aged 14, who was working under them and who witnessed the same, fled away from the place of occurrence; that the prosecution made its attempt to strengthen its case if possible, by examining P.W.3 as if he came over to the field of Nachimuthu Gounder along with the cattles, and he was there for an hour, and he was just crossing the house of Nachimuthu Gounder at about 8.00 or 8.30 P.M., and at that time, he happened to witness both A-1 and A-4 accompanied by A-2 and A-3 who were armed with aruvals; but he went to his place, and in the next morning when he came to know about the incident, he came back, and Ex.P2 complaint was given by P.W.1 the son of both the deceased; that as far as the evidence of P.W.3 was concerned, it has got to be rejected for the simple reason that once he claimed to be a relative and he used to come to the field of Nachimuthu Gounder everyday taking his cattle and if he had really witnessed two of the accused armed with deadly weapons and accompanied by two other accused and all coming out of the house of Nachimuthu Gounder, one would naturally expect him immediately to get into the house or inform others, but had not done so; that the conduct of P.W.3 leaving for his native place even after looking two of the accused armed with deadly weapons and also the other two accused and that too all coming out of the house of Nachimuthu Gounder and his informing P.W.1 the next morning would clearly indicate that he could not have been a witness at all; that apart from that, even in the earliest document, Ex.P2, P.W.1 has raised a suspicion whether they would have committed the crime, but he was not sure about it; that if really P.W.3 was in the nearby place, after getting the information, he would have passed on the message that he met the accused in front of the house of Nachimuthu Gounder along with the deadly weapons; but has not done so, and hence the evidence of P.W.3 has got to be rejected.
6.Added further the learned Senior Counsel that the only evidence barring the evidence of P.W.3 was that of P.W.2; that the evidence of P.W.2 is shrouded with all suspicious circumstances; that as far as P.W.2 was concerned, according to the prosecution witnesses, from the place of occurrence, he was taken to Coimbatore Medical Centre, and he was admitted at about 2.30 A.M. on 8.12.1995 and he was taking treatment for number of days and on 13.12.1995, he regained his consciousness, and the Investigator met him, and he gave a statement which was recorded under Sec.161 of Cr.P.C., and the same was forwarded to the Court; that as far as the evidence of P.W.2 was concerned, the case sheet and the Scan report all were filed before the Court, and the Doctor, P.W.17 was not sure whether he regained full consciousness on the day when he was alleged to have given a statement recorded by the Investigator under Sec.161 on 13.12.1995; and that apart from that, it is highly doubtful whether he regained consciousness.
7.It is further submitted by the learned Senior Counsel that even assuming that he was actually available at the place of occurrence, mere presence of P.W.2 cannot suffice to take his evidence as true or genuine; that he has actually implicated all the four brothers namely A-1 to A-4, attributing overt acts as if A-2 and A-3 attached both the deceased and P.W.2 and A-1 and A-4 were catching hold of both the deceased; that though the statements of the witnesses were recorded, they reached the Court the next day; that it was not the FIR, but it was only statements under Sec.161; that the very reading of the statement and also the way in which P.W.2 has given evidence before the trial Court would clearly indicate that it was thoroughly tutored; that from the evidence available, it would be quite clear that P.W.2 was in Coimbatore Medical Centre where he had treatment on the days prior to 13.12.1995 and also on 13.12.1995; that it is also the case of the prosecution that both the families were on inimical terms all along the period; that under the circumstances, there was all

possibility of P.W.1 tutoring P.W.2 so that it should be consistent to the complaint given by him under Ex.P2; that when there was all possibility of P.W.2 being tutored and his evidence was found to be not natural and the medical opinion canvassed was not in favour of the prosecution to indicate that he actually regained consciousness on 13.12.1995, all would go to show that the evidence of P.W.2 should not be given any credence; and that in the absence of the evidence of P.W.2, the prosecution had no further evidence to offer.

8.The leaned Senior Counsel would further submit that in the instant case, the prosecution has not proved the case beyond reasonable doubt; that as far as the alleged recovery pursuant to the confessional statement is concerned, those documents were fabricated in order to suit the prosecution case; and that even assuming to be true, the recovery of the weapons of crime would not suffice to sustain a conviction.

9.Added further the learned Senior Counsel that in the instant case, as far as A-1 and A-4 were concerned, they were shown as persons catching hold of D1 and D2 respectively, and the case of the prosecution was that they had got the common intention to share with; that had it been really true, all four would have been armed with weapons; but A-2 and A-3 had weapons, and A-1 and A-4 have gone unarmed; that under the circumstances, there could not have been any common intention to be shared by them; that what was going to be done by A-2 and A-3 could not have been known to A-1 and A-4, and hence there was no common intention to be shared with; that it has also to be considered if the Court comes to the conclusion that the evidence of P.W.2 was to be accepted; that under the circumstances, they are entitled for acquittal in the hands of this Court, and hence the judgment of the trial Court has got to be set aside.

10.The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the submissions made.

11.It is not controversy that one Nachimuthu Gounder D1 and his wife Saraswathi D2 met their death in an incident that had taken place at the night hours of 7.12.1995. Following the inquest made on the dead body of D1 Nachimuthu Gounder at the place of occurrence and also on the dead body of his wife D2 at the Government Hospital, Dharapuram, and preparation of two inquest reports respectively, the dead bodies were subjected to postmortem by P.Ws.9 and 10, the Medical Persons, respectively. P.W.9 has given his opinion that D1 would appear to have died of injury to spinal cord at C.3 level, while P.W.10 has given his opinion that D2 would appear to have died of haemorrhage due to multiple fractures and its complications. The cause of death of D1 and D2 as put forth by the prosecution was never disputed by the appellants before the trial Court and hence no impediment is felt by the trial Court and by this Court also in recording so.

12.In order to substantiate that it was the accused who went to the house of Nachimuthu Gounder on the night hours of 7.12.1995, and it was A-1 who caught hold of D1 and A-4 who caught hold of D2, and it was A-2 and A-3 who cut them respectively, and in the course of the same transaction, it was A-2 and A-3 who attacked P.W.2, the prosecution has relied on the only solitary evidence of P.W.2. Insofar as the evidence of P.W.3, he was shown as a chance witness who happened to cross the house of Nachimuthu Gounder and who immediately after the occurrence was over, saw A-2 and A-3 armed with deadly weapons and all the accused coming out of the house of Nachimuthu Gounder. The evidence of P.W.3 has got to be rejected for reasons put forth by the learned Senior Counsel for the appellants and recorded above.

13.It is true that in the instant case, the prosecution was left with the solitary testimony of P.W.2, an injured witness. It is well settled proposition of law that in a given case where an eyewitness happened to be an injured witness, his evidence should not be discarded unless and until a strong circumstance is noticed by the Court or reason is brought about. True it is, P.W.2 was a solitary eyewitness. The Apex Court has held in a case reported in (1996) 1 SUPREME COURT CASES 614 (KARTIK MALHAR V. STATE OF BIHAR) as follows:

"7.On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelu Thevar case and, therefore, conviction can be recorded on the basis of the statement of a single eyewitness provided his credibility is not shaken by any adverse

circumstance appearing on the record against him and the court, at the same time, is convinced that he is a truthful witness. The court will not then insist on corroboration by any other eyewitnesses particularly as the incident might have occurred at a time or place when there was no possibility of any other eyewitnesses being present. Indeed, the courts insist on the quality, and, not on the quantity of evidence."

14.It is the quality and not the quantity of evidence is material. Law does not require number of eyewitnesses, but at the same time, the Court can sustain a conviction on the sole testimony of the only eyewitness provided such evidence is cogent, reliable, trustworthy and inspired the confidence of the Court. It can be well stated that the whole evidence of P.W.2 has inspired the confidence of the Court. It is an admitted position that P.W.2 was actually employed in the house of P.W.1 during the relevant time. The evidence of P.W.1 was to the effect that on the date of occurrence namely 7.12.1995, in the noon hours, he left the house for the sale of chilli at Ottanchatram leaving the parents D1 and D2 along with P.W.2. Thus it would be quite evident that on the day when the occurrence has taken place, the inmates in the house were D1 and his wife D2 and also P.W.2. Added evidence of P.W.2 is that when he returned to his house at 10.00 P.M., he found the dead body of D1, and also the condition of D2 and P.W.2 was so serious, and thereafter he immediately informed to others, engaged a taxi and took the body of his mother and also P.W.2, and on the way his mother died, and hence the dead body of D2 was actually handed over to the Government Hospital, Dharapuram, and P.W.2 was taken to Coimbatore Medical Centre where he was actually admitted by Dr.Saravanan at about 2.30 A.M. on 8.12.1995. The case records pertaining to the treatment given to him from the time of admission till he was actually discharged from Government Medical Centre on 21.12.1995, were placed before the Court, and it was actually perused. From this, it would be quite clear that immediately after the occurrence, when P.W.2's condition was found to be serious, he was taken from the place in an unconscious stage, and he was actually admitted in the hospital.

15.Now, at this juncture, a comment was made by the learned Senior Counsel for the appellants that the evidence of P.W.2 could not be believed, and it is highly doubtful whether he regained consciousness. But, in view of the evidence available, this Court is unable to agree with the learned Senior Counsel. From the perusal of the available records, it would be quite clear that on 9.12.1995, 10.12.1995 and 11.12.1995, he was regaining consciousness slowly though he was not able to talk those days. According to the Investigator P.W.16, he went over there and ascertained from the Doctor, and thereafter he actually recorded the statement of P.W.2 under Sec.161 Cr.P.C. on 13.12.1995. It is true that a certificate that P.W.2 was conscious enough to give such a statement was not obtained by the Investigator from the Doctor. It remains to be stated that it was not a dying declaration. P.W.2 whose statement was recorded under Sec.161 Cr.P.C. was examined before a Court of law, and thus the appellants had the full opportunity of cross-examining the witness, and it was to be testified. P.W.2 has given evidence before the Court that at that time he was available with both the deceased, and the TV was on, and all the accused came inside and two of the accused were armed with deadly weapons, and A-1 caught hold of D1 while A-4 caught hold of D2, and D1 was attacked by A-2, and D2 was attacked by A-3, and when P.W.2 was witnessing the same, he was attacked by A-2 and A-3. The evidence what was given before the Court was consistent to the statement given by him and recorded by the Investigator under Sec.161 Cr.P.C. It is pertinent to point out that the statement which was recorded by the Investigator on 13.12.1995, has reached the Court the very next day i.e., 14.12.1995. It is further to be added that had it been the real intention of the Investigator to add some false evidence, there was no need for him to wait for five days to record such a statement from the mouth of P.W.2, and this would have been done earlier, but not so. That apart, the medical opinion canvassed through the case sheet of P.W.2 would clearly indicate that day by day he was regaining consciousness slowly, and in such a situation, P.W.16, the Investigator, was to wait to record the statement of the witness. In a given case where only one eyewitness is available and alive, and he was under treatment in an unconscious stage, the statement of that witness could be recorded when he regained consciousness. Fortunate for the

prosecution in the instant case, P.W.2 was alive, and his statement was recorded when he regained consciousness on 13.12.1995. Accordingly, his statement has reached the Court the next day i.e., 14.12.1995. Thus it leaves no doubt in the mind of the Court.

16.Apart from the above, the evidence of P.W.2 was thoroughly consistent to the medical evidence adduced by the prosecution. The medical opinion canvassed through the postmortem Doctor and the postmortem certificate stood in full corroboration of the ocular testimony projected through P.W.2.

17.Above all, the prosecution to its advantage had the confessional statement leading to recovery. At the time of arrest, A-2 gave a confessional statement voluntarily, and the weapons of crime have been recovered and produced before the Court along with the bloodstained clothes. This confessional statement leading to recovery would be pointing to the nexus of the crime with the accused. Thus, the contention put forth by the learned Senior Counsel for the appellants that the evidence of P.W.2 could not be believed has got to be rejected for all the reasons stated above.

18.The next contention put forth by the learned Senior Counsel for the appellants that the time between 7.30 P.M. and 8.30 P.M. has been fixed by the Investigator according to his convenience, cannot be accepted for the simple reason that when P.W.1 came to the house at about 10.00 P.M., he found D1 dead, and also found D2 and P.W.2 severely injured, but alive. The evidence of P.W.1 was that when he gave the complaint, it is stated that the occurrence could have happened between 7.30 P.M. and 8.30 P.M. on 7.12.1995. This was actually the case of the prosecution as put forth. It is to be further added that in the instant case, not even a suggestion was put to any one of the witnesses to indicate that Nachimuthu Gounder or his family members had got any enmity with any other person. Added further, all the jewels which were worn by D2, the wife of Nachimuthu Gounder, D1, were actually found in the dead body, and they were recovered at the time of postmortem and have been handed over. Thus it would be quite clear that it was not a murder for gain. In the case on hand, the evidence of P.W.2, though solitary testimony, stood fully corroborated, and all the circumstances attendant would indicate that they were the accused who have committed the heinous crime of murdering Nachimuthu Gounder and his wife Saraswathi. Therefore, the contentions put forth by the learned Senior Counsel for the appellants as to the factual position, are liable to be rejected and accordingly, rejected.

19.Insofar as the second line of argument that all the four accused could not have the common intention to share with, and hence A-1 and A-4 who were alleged to have caught hold of D1 and D2 respectively cannot be on the same footing along with A-2 and A-3, this Court is unable to agree with him for the following reasons. The occurrence has taken place in the night hours of 7.12.1995 and also in the house of Nachimuthu Gounder D1. From the evidence available, it would be quite clear that the families who are on the warpath for a longtime. Both A-2 and A-3 were armed with deadly weapons, and A-1 and A-4 have accompanied them. The words uttered by them would clearly indicate the intention with which they entered into the house at that time, and A-1 and A-4 have facilitated the crime when A-2 and A-3 attacked D1 and D2 respectively. Further they wanted to put an end to P.W.2 since he was the only eyewitness possible. All would go to show that they went there with the common intention of causing the death of both of them. Under the circumstances, the contention put forth by the learned Senior Counsel cannot be accepted. It can be well stated that A-1 to A-4 had the common intention to share with and entered into the house of Nachimuthu Gounder and caused their death. Hence they are all to be found guilty under Sec.302 read with 34 of IPC, and life imprisonment has got to be awarded. As far as A-2 and A-3 are concerned, they attacked P.W.2 and caused grievous injuries. The injuries are found in the accident register copy, Ex.P25, which would clearly indicate that their intention was actually to put an end to him in order to clear off the available evidence. A-2 and A-3 are liable to be convicted and sentenced to seven years Rigorous Imprisonment under Sec.307 of IPC.

20.Accordingly, the conviction of A-2 and A-3 under Sec.302 IPC is modified, and they are convicted under Sec.302 read with 34 of IPC. The life imprisonment imposed by the trial Court on them, will hold good.

21.The conviction and sentence imposed on A-1 and A-4 under Sec.302 read with 34 IPC are

confirmed.
22.The conviction of A-2 and A-3 under Sec.307 is confirmed; but, the sentence of 9 years Rigorous Imprisonment imposed on them is modified, and they are directed to suffer 7 years Rigorous Imprisonment.
23.The conviction and sentence imposed on A-1 under Sec.307 read with 109 of IPC are confirmed. The sentences imposed on them are to run concurrently.
24.The sentence already undergone by the appellants/ accused shall be given set off.
25.In the result, this criminal appeal is, accordingly, dismissed. The Sessions Judge shall take steps to commit the appellants to prison to undergo the sentence imposed on them.

nsv

To:

1.The I Additional Sessions Judge
and Chief Judicial Magistrate
Erode District, Erode.
2.The S.I. Of Police
Uthiyur Police Station
Erode Dist.
(Crime No.198/95)
3.The Public Prosecutor
High Court,
Madras